PUBLIC PROSECUTOR

v.

FRANCIS T. SEOW

HIGH COURT, SINGAPORE
WEE CHONG JIN JC
[MAGISTRATE'S APPEAL NO. 169 OF 1981]
26 MAY 1982

LEGAL PROFESSION: *Practising certificate - Application for renewal of - Statutory declaration by the applicant - False - Burden of proof on prosecution - Amendment to the Legal Profession Act - Section 30 Legal Profession Act (Chapter 217) - Section 182 Penal Code (Chapter 103).*

The respondent, an advocate and solicitor started his private practice in 1971 after he had resigned from the Government Legal Service as Solicitor General. Towards the end of March 1980, he applied to the then Assistant Registrar of the Supreme Court, for a practising certificate for the year ending 31 March 1981. For this purpose he also submitted a statutory declaration, along with the application (as required) "solemnly and sincerely" declaring that he was not disqualified by s. 30(1)(i) of the Legal Profession Act. The declaration was sworn before a Commissioner for Oaths also an advocate and solicitor. Towards the end of March 1980 the Assistant Registrar issued a practising certificate to the respondent.

Subsequently in 1981, he was charged under s. 182 of the Penal Code for giving false statutory declaration to a public servant (Asst. Registrar of the Supreme Court) for the purpose of obtaining a practising certificate. At the trial it was not in dispute that he had given false information to the Assistant Registrar. Legal Profession (Amendment) Act 1979, which came into force on 15 October 1979 amended s. 30(1) of the Act by adding 3 new paragraphs to the section of which s. 30(1)(f) states that a solicitor will be prohibited from applying for a practising certificate, if he had outstanding judgment debts in excess of $100,000.00 at the time of application. the respondent had a judgment debt of $266,497.09 (including interest) when he submitted his application.

Further to the amendment, the Registrar of the Supreme Court wrote to the President of the Law Society that he required all applicants for a practising certificate to execute a statutory declaration as indicated. The section in question was widely disseminated through various media, and in particular the Law Society of Singapore which advised all practising members to comply with it. However the respondent maintained he was not fully aware of the said amendments until 24 October 1980 that is after he had applied for and received the practising certificate and that he was frequently away from Singapore during the particular period. The trial Judge acquitted the respondent because "there was a reasonable doubt in (his) mind as to whether or not (the respondent) was in fact aware of the Legal Profession Act when he made the statutory declaration".

In this appeal by the Public Prosecutor the only issue was whether or not the respondent knew that he was not disqualified by s. 30(1)(f) from applying for a practising certificate.

Held:

The respondent's explanations defies credulity and no reasonable tribunal could have any doubt that the respondent was aware of the statutory disqualifying provision when he made the statutory declaration.

[Appeal allowed. Acquittal set aside and verdict of guilty substituted with a fine of $1,000.00.]

For the appellant - Sowaran Singh
For the respondent - Cashin & Choo

JUDGMENT

Wee Chong Jin JC:

On 30 March 1979 Parliament passed the Legal Profession (Amendment) Act 1979. It was assented to by the President on 26 April 1979 but did not come into operation until 15 October 1979. *Inter alia*, the amending Act amended s. 30(1) of the Legal Profession Act by the addition of paras. (d), (e) and (f). These additions prohibited a solicitor from applying for a practising certificate:

> (d) if he is an undischarged bankrupt or a receiving order in bankruptcy is an force against him; or
>
> (e) if he has entered into a composition with his creditors or a deed of arrangement for the benefit of his creditors; or
>
> (f) if he has one or more outstanding judgments against him amounting in the aggregate to one hundred thousand dollars or more which he has been unable to satisfy within six months from the date of the earliest judgment.

The amending Act also repealed s. 52 and enacted a new s. 52 which provided for compulsory voting in the election of the members of the Council of the Law Society.

After these amendments had come into effect the Registrar of the Supreme Court, before the close of the practice year ending 31 March 1980, wrote to the President of the Law Society informing him that by virtue of r. 8 of the Solicitors Practising Certificate Rules 1970 he required all applicants for a practising certificate to execute a statutory declaration in the form annexed to his letter. The form annexed to his letter. The form was as follows:

The Statutory Declaration
Act (Chapter 13)
Statutory Declaration

I ...

NRIC/Passport No. ... Occupation ...

Address ...

do solemnly and sincerely declare that:

1. I am not disqualified by s. 30(1), (d), (e) or (f) of the Legal Profession Act (Cap. 217) from applying for a practising certificate for the year ending 31 March 19...; and

2. *(a) I voted at the last election of members to the Council of the Law Society of Singapore.

OR

*(b) I did not vote at the last election of members to the Council of the Law Society of Singapore.

(* Delete where appropriate)

and I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declaration Act 1835.

...

(Signature of Declarant)

Declared before me at Singapore

this ... day of ... 19 ...

Justice of the Peace, Notary Public or other officer empowered by law to administer oaths, affirmations, or affidavits.

The Registrar required from every applicant for a practising certificate a statutory declaration because of the new provisions of s. 30(1)(d), (e) and (f) and s. 52(2) of the Act.

Pursuant to the letter from the Registrar the Secretary of the Law Society sent a circular dated 19 March 1980 to all its members informing them of the Registrar's requirement and attached to the circular the form of the statutory declaration that the Registrar required.

On 29 March 1980, Mr. Francis T. Seow, the respondent in this appeal, an advocate and solicitor and a member of the Law Society of Singapore appeared before Mr. C.C. Tan, also an advocate and solicitor and who was also a Commissioner for Oaths, and made a statutory declaration in the form prescribed by the Registrar.

In his statutory declaration the respondent "solemnly and sincerely" declared that he was not disqualified by s. 30(1)(f) from applying for a practising certificate for the year ending 31 March 1981. In fact, he was disqualified as there was then outstanding against him a judgment debt well in excess of $100,000.00

Mr. Tan Seck Sam, the then Assistant Registrar of the Supreme Court, received the respondent's application for a practising certificate for the year ending 31 March 1981 including the statutory declaration sometime towards the end of March 1980 and issued a practising certificate to the respondent.

On 1 September 1981 the respondent appeared before a District Court and claimed trial to the following charge:

You, Francis T. Seow, m/52 yrs I.C.1112608-A

are charged that you, on or about 31 day of March 1980 at the Registry, Supreme Court, Singapore, did give to a public servant, namely, one Tan Seck Sam, an Assistant Registrar of the Supreme Court , Singapore, information in writing contained in a Statutory Declaration declared before one C.C. Tan, a Commissioner for Oaths on 29 March 1980, to wit,

I am not disqualified by s. 30(1)(d), (e) or (f) of the Legal Profession Act (Chapter 217) from applying for a practising certificate for the Year ending 31 March 1981

which you knew to be false knowing it to be likely that you would thereby cause the said public servant to issue you with a Practising Certificate for the Year ending 31 March 1981 which he would not have done if the true state of fact respecting which said information was given were known to him, and you have thereby committed an offence punishable under s. 182 of the Penal Code (Chapters 103).

During the trial it was not in dispute that the respondent had given information to the Assistant Registrar, Supreme Court; that the information was in fact false because at the time he gave the information he was in fact not qualified to apply for a practising certificate as at that time he had a judgment debt in excess of $100,000/- (in fact the amount including interest was $266,497.09); that it had induced the Assistant Registrar to do something which he ought not to have done if the true state of facts respecting such information were known to him. The only issue was whether or not the respondent knew that the respondent knew that the information in his statutory declaration that he was not disqualified by s. 30(1) from applying for a practising certificate for the year ending 31 March 1981 1981 was false and it was conceded by the Prosecution that the burden of proof on his issue lay on the Prosecution.

The following undisputed facts were also adduced in evidence at the trial:

1. A draft of the Legal Profession (Amendment) Bill was sent to all members of the Law Society on 10 November 1978.

2. The amendments to the Legal Profession Act proposed in the Bill were discussed at the Annual General Meeting of the Law Society on 25 November 1978.

3. The minutes of that Annual General Meeting were sent to all members of the Law Society.

4. The date of the coming into operation of the Legal Profession (Amendment) Act was notified to all members of the Law Society.

5. The Secretary of the Law Society notified all members of the Law Society on 19 March 1980 of the requirement by the Registrar of the Supreme Court of a statutory declaration "in the Form attached in view of ss. 30(1)(d), (e) and (f) and 52(2) of the Legal Profession Act", and advising all members "to comply with the Registrar's request when applying for their Practising Certificates.

6. The front page of the Straits Times of 3 March 1979 had an article captioned **"New Powers Sought and Quicker Action on Crooked Lawyers"** which contained the following paragraph:

> The government to seek new powers in Parliament on Monday to pave the way for quicker action or investigation against lawyers suspected of abusing their clients' trust by using money deposited with them, or other forms of misconduct.
>
> The Legal Profession (Amendment) Bill, to be tabled by the Minister for Law, Science and Technology and Environment, Mr. E.W. Barker, will also have provisions to disqualify if he is financially embarrassed, and to make voting compulsory in elections to the Council of the Law Society of Singapore.

7. Page 3 of the New Nation (the only English daily afternoon newspaper) of 13 March 1979 had an article captioned "Second Reading of Legal Bill which contained the following paragraph:

> (The Legal Profession [Amendment] Bill) is also aimed at disqualifying a embarrassed in certain circumstances from applying for a practising certificate.

8. Page 14 of the Straits Times (the only English daily newspaper) of 31 March 1979 had an article captioned "House Passes Bill to tighten control over lawyers" which contained the following paragraphs:

> A clause has also been included as a preventive measure to safeguard the public from dealing with solicitors who are financially embarrassed.
>
> A solicitor will be disqualified from applying for a practising certificate if he is an undischarged bankrupt, or has entered into a composition with his creditors, or has one or more outstanding judgments against him amounting to $100,000.00 or more which he is unable to satisfy within six months from the date of his judgments.

The respondent in his defence testified that "he was not fully aware of (the amendments to the Legal Profession Act by the Legal Profession [Amendment] Act) until it was brought home to (him) that there were such amendment and that they had come into effect on 15 October 1979" until 24 October 1980. He said that when he swore the statutory declaration on 29 March 1980 before Mr. C.C. Tan his "attention was not particularly directed to s. 30(1)(d), (e) and (f)" and that he then believed the contents to be true. He said the forms

accompanying his application to the Registrar for a practising certificate for the year ended 31 March 1981 (which included the statutory declaration) were completed and typed, with deletions where appropriate, by his personal assistant, Miss Ruby Koh Bee Lian, and she had been doing so since he started private practice in 1971 after he had resigned from the Government Legal Service at the time when he was Solicitor-General.

In cross-examination the respondent asserted that from 1979 to October 1980 he had not heard about these amendments to the Legal Profession Act. His reason was that during half of that period he was away from Singapore and that when he returned he would only look through very quickly the newspapers when he had the time to do so.

In cross-examination he admitted that Law Society circulars are left in his room and that he read them in the sense of "merely glancing" at them but, when asked whether he had read the circulars on the Legal Profession (Amendment) Act 1979, his answer was "I don't remember seeing them". He said he did not read the circular which had annexed to it the statutory declaration required by the Registrar.

When he was re-examined specifically on his statutory declaration his answers were evasive as appears from the following *verbatim* extract:

> Q. Your Statutory Declaration in P21. When it was sworn, did you read it at all?
>
> A. I suppose I must have looked at it. I must have looked at it. I thought it was just one of those routine things.
>
> Q. Did you see or notice the reference to s. 30(1)(d)(e)(f)?
>
> A. If I did see it, it never registered. Court will note that in great part of it related to voting and that was the part that caught my eye. That was spelt out in detail.

I have set out the relevant evidence at some length. The respondent was the Solicitor-General when he resigned in 1971 and started his private practice. The relevant amendment disqualifying a solicitor from applying for a practising certificate if he has an undischarged judgment debt exceeding $100,000.00 from the date of the judgment had been brought to the attention of all practising members by circulars of the Law Society and by prominent publicity in the press prior to the respondent's statutory declaration the Law Society had circularised all practising members advising them to comply with the Registrar's requirements of a statutory declaration in the form prescribed by the Registrar. Every circular of the Law Society had been left in the respondent's room in his office and he admitted "glancing" at them. He had made a solemn declaration for the purpose of obtaining a practising certificate for the year ending 31 March 1981 knowing that the Registrar would accept and act on it.

From the undisputed facts the inference was irresistible that the respondent was irresistible that the respondent knew of the existence and contents of s. 30(1)(f) of the Legal Profession Act when he made the statutory declaration.

The respondent's explanations for being unaware of the existence and contents of s. 30(1)(f) were that in 1979 to October 1980 he was frequently away from Singapore; that he was so busy that he seldom read the newspapers and whenever he did he looked through them "very quickly"; that he merely glanced at all Law Society circulars; that he affirmed the statutory declaration thinking it was "just one of those routine things" and that "if he saw the reference to s. 30(1), (e) and (f) it never registered. Unless his explanations were accepted by the trial Judge or unless the trial Judge could not feel sure that he was aware of the disqualifying provisions of s. 30(1)(f), the prosecution had proved his guilt.

The trial Judge acquitted the respondent. It the Grounds of Decision the trial Judge did not say that he accepted the respondent's explanations. The trial Judge acquitted the respondent doubt in (his) mind as to whether or not (the respondent) was in fact aware of the amendments to the Legal Profession Act when he made the statutory declaration".

In my opinion the trial Judge applied the wrong test in the context of this case unless in using the expression "reasonable doubt in my mind" the trial Judge meant to say that after considering to say that after considering all the evidence he could not feel sure that the respondent knew of the disqualifying provisions of s. 30(1)(f). The proper approach should have been "Do I accept the respondent's explanations and, if not, do I feel sure that he was aware of that statutory disqualifying provision?"

In my judgment, having regard to all the facts and the surrounding circumstances, the respondent's explanations relating to a matter governing his continued right to practise his profession defies credulity and no reasonable tribunal could have any doubt that the respondent was aware of the statutory disqualifying provision when he made the statutory declaration. Accordingly, the appeal must be allowed, the order of acquittal set aside and a verdict of guilty substituted. The sentence will be the maximum fine of $1,000.00.

Also found at [1982] CLJ 307